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SUPREME COURT, U.S.

80-6743

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

EDDIE SAMUEL IVORY, CHARLES JOHNSON, EDMOND DUHART, BEN CHANEY, BLAIR SMITH, GEORGE HELLER, ROBERT J. BUTLER and JAMES RUTLEDGE,

Appellants,

v.

LOUIE L. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS; PAUL MURCHEK, DIRECTOR, FLORIDA PAROLE AND PROBATION COMMISSION,

Appellees.

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT--STATE CIVIL CASE

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COUNSEL FOR APPELLANTS

PRELIMINARY MATTER

QUESTIONS PRESENTED

Does §944.485, Florida Statutes (1978), violate the right to privacy of Florida prisoners by requiring them to fully disclose all of their assets and income as a condition of parole eligibility.

Does §944.485, Florida Statutes (1978), violate the ex post facto prohibitions of the Federal Constitution by imposing upon all Florida prisoners the obligation of paying a pro rata share of the cost of maintaining the Florida prison system, including those inmates who had committed offenses and were incarcerated prior to the effective date of the Florida Statute.

Does §944.485, Florida Statutes (1978), deprive Florida prisoners of due process of law by assessing each Florida prisoner a pro rata share of the cost of maintaining the Florida prison system without providing any Fourteenth Amendment due process safeguards in the determination of how much each prisoner will pay.

Does §944.485, Florida Statutes (1978), deprive Florida prisoners of due process of law by failing to provide them any Fourteenth Amendment procedural due process safeguards in the determination of whether they have sufficient funds or income available for the payment of their pro rata assessment of the cost of maintaining Florida's prison system.

Whether §944.485, Florida Statutes (1978), violates the substantive due process rights of Florida prisoners by imposing upon them the cost of their own involuntary servitude, and by being otherwise arbitrary, capricious, and rationally unrelated to any legitimate state purpose.*

---

*The parties to the proceeding in the Supreme Court of Florida were Eddie Samuel Ivory, Charles Johnson, Edmond Duhart, Ben Chaney, Blair Smith, George Heller, Robert J. Butler and James Rutledge, Appellants herein,and Louie L. Wainwright, Secretary, Department of Corrections; and Paul Murchek, Director, Florida Parole and Probation Commission, Appellees herein.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

EDDIE SAMUEL IVORY, CHARLES JOHNSON, EDMOND DUHART, BEN CHANEY, BLAIR SMITH, GEORGE HELLER, ROBERT J. BUTLER and JAMES RUTLEDGE,

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v.

LOUIE L. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS; PAUL MURCHEK, DIRECTOR, FLORIDA PAROLE AND PROBATION COMMISSION,

Appellees.

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT--STATE CIVIL CASE

OPINIONS BELOW

The Opinion of the Florida Supreme Court entered October 30, 1980, Motion for Rehearing overruled February 20, 1981, and the Opinion of the Circuit Court of Leon County, Florida are set out in the Appendix hereto. The decision of the Florida Supreme Court is reported as Ivory v. Wainwright, 393 So.2d 542 (Fla. 1981).

JURISDICTION

This action for injunctive and declaratory relief draws into question the constitutional validity of §944.485, Florida Statutes (1978), upon the ground that the statute violates the right to privacy of Florida prisoners, that it is an ex post facto law, and that it denies Florida prisoners substantive and procedural due process of law. The statute requires all prisoners to disclose all of their assets and revenues as a condition of parole eligibility. The statute also requires prisoners to pay from such income and assets all or a fair portion of the prisoner's daily subsistence costs, based upon the prisoner's ability to pay, the liability or potential liability of the prisoner to the victim or the guardian of the estate of the victim, and the needs of the inmates dependents. Although the statute provides that prisoners shall be entitled to reasonable advance notice of the assessment and shall be afforded an opportunity to present reasons for opposition to the assessment, reasonable procedural safeguards are not provided by statute or by implementing rule, and judicial review of assessments is unavailable.

The federal constitutional questions were initially raised by the Appellants in a pro se complaint seeking injunctive and declaratory relief from a Florida trial court. On appeal to the Florida Supreme Court, appointed counsel raised and briefed the federal constitutional questions. On June 18, 1979, the Leon County Circuit Court ruled that the statute did not violate the Appellants' rights against self-incrimination, did not deprive them of property without due process of law,

did not deny them of equal protection of the law, or abridge any of their privileges or immunities, and that the statute did not violate "any other constitutional right." On October 30, 1980, the Supreme Court of Florida affirmed the trial court's judgment, expressly holding the statute non-violative of rights to privacy, not in violation of the prohibition against ex post facto laws, and that the statute did not deny Appellants liberty or property without procedural due process. With one justice dissenting, the majority of the Florida Supreme Court upheld the statute as against the constitutional challenge. The dissenting opinion of Justice Boyd states his view that the statute is an ex post facto law, and also that it violates prisoners' Fourteenth Amendment due process rights.

A timely Motion for Rehearing was filed by the Appellants on November 12, 1980, and was overruled by the Supreme Court on February 20, 1981. Notice of Appeal to this Court was timely filed on May 20, 1981.

The jurisdiction of the United States Supreme Court to review this decision of the Supreme Court of Florida on appeal is conferred by 28 U.S.C. §1257(2). Stanton v. Stanton, 421 U.S. 7 (1975); Duren v. Missouri, 99 S.Ct. 664 (1979); Orr v. Orr, 99 S.Ct. 1102 (1979).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, §10, Clause 1 of the Constitution of the United States provides:

> No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin as tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Ninth Amendment to the United States Constitution provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Tenth Amendment to the United States Constitution provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The Fourteenth Amendment to the United States Constitution, §1, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 944.485, Florida Statutes (1978), provides:

> (1) In recognition of the fact that many prisoners in the correctional system have sources of income and assets outside of the correctional system, which may include bank accounts, inheritances, real estate, social security payments, veteran's payments, and other types of financial resources, and in recognition of the fact that the daily subsistence cost of incarcerating prisoners in the correctional system is a great burden on the taxpayers of the state, each prisoner in the state correctional system, except those who have entered into an agreement under s.947.135, prior to October 1, 1978:
>
> (a) Shall disclose all revenue or assets as a condition of parole eligibility.
>
> (b) Shall pay from such income and assets, except where such income is exempt by state

> or federal law, all or a fair portion of the prisoner's daily subsistence costs, based upon the inmate's ability to pay, the liability or potential liability of the inmate to the victim or the guardian or the estate of the victim, and the needs of his dependents.
>
> (2) Any prisoner who is directed to pay all or a fair portion of daily subsistence costs is entitled to reasonable advance notice of the assessment and shall be afforded an opportunity to present reasons for opposition to the assessment.
>
> (3) The department shall promulgate, within 90 days of October 1, 1978, rules which implement this section.

Chapter 33-17, Florida Administrative Code (1979), Rules of the Florida Department of Corrections, implementing Florida Statute Section 944.485 (1978), is set forth in full in the appendix.

STATEMENT OF THE CASE

On filing the complaint, the Appellants were all prisoners within the Florida correctional system. In accordance with the challenged statute, they are required to disclose their assets and revenues as a condition of parole eligibility, and are required to pay any assessment imposed by the Florida Department of Corrections. All of the Appellants were incarcerated prior to the effective date of Section 944.485, Florida Statutes (1978), and were convicted of crimes occurring prior to that effective date. Neither an evidentiary hearing as to the propriety of any assessment nor judicial review of the administrative determination are available to any of the Appellants. The complaint was filed by the Appellants in the Leon County Circuit Court in or about June 1979. On June 18, 1979, the trial court entered judgment against the Appellants, before answers had been filed in the litigation. The trial court held the statute constitutional and valid against any constitutional attack, and specifically held that the statute did not violate the right against self-incrimination, did not deprive the Appellants of property without due process of law or deny them equal protection of the laws, and that the statute did not abridge privileges and immunities of the Appellants.

On October 30, 1980, the Florida Supreme Court rendered its opinion affirming the trial court's judgment, specifically upholding the statute as against the Appellants' attack that the statute violated the right of privacy, the right to substantive and procedural due process of law, the right against

self-incrimination, and the right to be free from ex post facto legislation. The Florida Supreme Court's decision split 4-2-1. Four justices concurred in the majority opinion; two justices concurred in the result only; and, Justice Boyd filed a dissenting opinion.

The majority opinion relied upon the case of Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980), a decision finding no right of privacy under the state constitution, to find no right of privacy was infringed by the statute. The majority found no ex post facto violation because it found the purpose of the statute was not to increase "punishment." The majority relied in part upon Fleming v. Nestor, 363 U.S. 603 (1960), for this result. The majority disposed of the Appellants' due process issue by holding that parole is neither liberty or property, within the meaning of the Fourteenth Amendment. The majority did not address whether the required assessment and payment of funds from the prisoners assets would constitute property, in the court's view. The Supreme Court addressed two other points not raised by this appeal.

The dissenting opinion expressed the opinion that the statute constituted an ex post facto law and that it deprived prisoners of liberty and property without due process of law.

THE FEDERAL QUESTION IS SUBSTANTIAL

The question of disclosural privacy posed by this appeal is considerable, because the State of Florida has chosen to accomplish its purpose by a means calculated to be as intrusive as possible into the personal affairs of prisoners. The Florida statute requires all prisoners to disclose all assets and revenues to the state of Florida on a regular basis, or forfeit eligibility for parole. The arguable reason for such disclosure is that the information is needed to decide which prisoners can afford to pay their pro rata share of the maintenance of Florida's prison system. It is clear to any reasonable person that Florida needs disclosure only from those prisoners who elect not to pay their assessment. Just as it would make little sense to require all citizens to disclose their assets in order to determine which citizen should receive welfare payments, it makes little sense to require all prisoners to disclose their full assets in order to identify those who cannot afford to pay the assessment. While all the dimensions of the right of privacy have not been fully defined, this Court has made clear that the First, Third, Fourth, Fifth, Sixth, Ninth and Tenth Amendments to the United States Constitution have carved out a zone of privacy which may not be infringed unreasonably by government. Griswold v. Connecticut, 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973). Florida has intruded unreasonably upon that zone of privacy by choosing the most intrusive means of serving its arguable state ends. Because Florida unreasonably imposes disclosure upon prisoners, while using parole eligibility as a coercive

factor, Florida's scheme borders on being an unreasonable search within the meaning of the Fourth Amendment.

The Florida statute has a devastating effect upon prisoners whose crimes were committed or who were incarcerated prior to the effective date of the statute. Those persons are suddenly subjected, for the balance of their prison terms, to paying a pro rata share of the maintenance of Florida's prison system. As noted by Justice Boyd in his dissent, this monetary exaction may in some cases exceed fines permissible for the crime by state legislative act. Even assuming the most reasonable subsistence costs for a prisoner, over the period of two or three years, the Florida statute will have a devastating financial impact upon any prisoner with any assets. Already stripped by their incarceration of the ability to earn an income for themselves and their families, prisoners will be stripped entirely of any assets they may have accumulated prior to incarceration. The Florida Supreme Court held that the statute did not violate ex post facto prohibitions because the purpose of the statute was not punitive. Nevertheless, the statute vastly increases the collateral consequences of conviction and incarceration. This Court's recent decision in Weaver v. Graham, ___ U.S. ___, 49 U.S.L.W. 4155 (1981), shows the substantial character of this issue. In Weaver, this Court held that it is the "effect, not the form," which determines the ex post facto character of a statute, a distinction entirely missed by the Florida Supreme Court.

The procedural due process issues posed by this case are likewise considerable. The statute provides for the systematic taking of a prisoner's assets, his property, without providing a reasonable modicum of Fourteenth Amendment procedural due

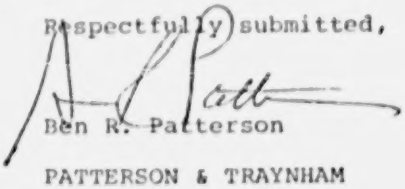
process safe guards to protect that property.

The statute directs that a prisoner shall pay all or a fair portion of his daily subsistence costs. "Daily subsistence" and "fair portion" are considerable factual issues concerning which reasonable persons will differ. Fair portion is to be determined according to the prisoners ability to pay, his liability or potential liability to victims and the needs of his dependents. These issues also have considerable factual significance. An administrative agency of the State of Florida is charged with deciding how much of the prisoner's property will be taken to satisfy the statute, and yet neither the statute nor the implementing rules provide the prisoners with either an evidentiary hearing or judicial review of the administrative determination to protect his property against arbitrary taking. The prisoner is, at most, allowed to protest the assessment in writing. The Florida Supreme Court skirted this entire issue by holding that parole was neither liberty nor property within the meaning of the Fourteenth Amendment. The unavailability of procedural safeguards to prisoners prior to the taking of their property by government violates principles as set forth in an endless number of cases decided by this Court. Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950); Granis v. Ordean, 234 U.S. 385 (1914); Fuentes v. Shevin, 407 U.S. 67 (1972); Armstrong v. Monzo, 380 U.S. 306 (1915); Board of Regents v. Roth, 408 U.S. 564 (1972); Mathews v. Eldridge, 424 U.S. 319 (1976); Goldberg v. Kelly, 397 U.S. 254 (1970).

Last, there is the question of whether the statute comports with substantive due process, for it brings into play the question of whether it is both rational and civilized to

impose upon incarcerated prisoners the cost of their own incarceration. Ignoring the fact that our social system has incarcerated the prisoner and rendered him unable to earn an income, the statute assumes that the individual prisoner is the reason for the expense of a prison system being imposed upon our society at large. This is by no means sound reasoning. It can be forcefully argued that the burgeoning growth of prisons and stockades across the face of this nation has a great deal more to do with how we run our American civilization than with the inherent nature of those persons who populate the prisons. This is a matter which deserves plenary consideration.

Respectfully submitted,



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COUNSEL FOR APPELLANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional statement has been served upon each of the named Appellees, Louie L. Wainwright and Paul Murchek, through their counsel the Attorney General of Florida by mailing the same by first class United States Mail to Jim Smith, Florida Attorney General, and to Lucy H. Harris, Assistant Attorney General, The Capitol, Tallahassee, Florida, this 21st day of May 1981.

Ben R. Patterson

Sworn to and subscribed
before me this 21st
day of May, 1981.

Notary Public
My commission expires: 9/7/82

APPENDIX

SUPREME COURT OF FLORIDA

No. 57,251

EDDIE SAMUEL IVORY, CHARLES JOHNSON, EDMOND DUHART, BEN CHANEY, BLAIR SMITH, GEORGE HELLER, ROBERT J. BUTLER, and JAMES RUTLEDGE, Appellants,

vs.

LOUIE L. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS, FLA., PAUL MURCHEK, DIRECTOR, FLORIDA PAROLE AND PROBATION COMMISSION, Appellees.

[October 30, 1980]

ENGLAND, J.

This cause is before this Court on direct appeal from a final judgment of the circuit court upholding as facially valid section 944.485, Florida Statutes (Supp. 1978), which requires, as a condition of parole eligibility, that prisoners disclose their assets and income, and that they be assessed the cost of their subsistence in prison. The payment of subsistence costs is subject to the prisoner's ability to pay, and certain specified exemptions.*

*Section 944.485, Florida Statutes (Supp. 1978) provides:

> (1) In recognition of the fact that many prisoners in the correctional system have sources of income and assets outside of the correctional system, which may include bank accounts, inheritances, real estate, social security payments, veteran's payments, and other types of financial resources, and in recognition of the fact that the daily subsistence cost of incarcerating prisoners in the correctional system is a great burden on taxpayers of the state, each prisoner in the state correctional system, except those who have entered into an agreement under s. 947.135 prior to October 1, 1978:

Appellants raise several alleged constitutional infirmities in the subject statute, including abridgement of their right of disclosural privacy based on a decision of the First District Court of Appeal in Byron, Harless, Schaffer, Reid and Associates, Inc. v. State ex rel. Shellenberg, 360 So.2d 83 (Fla. 1st DCA 1978), violation of the prohibition on ex post facto laws, deprivation of property without procedural due process, denial of the privilege against self-incrimination, and the unlawful delegation of legislative authority.

The issue of disclosural privacy is foreclosed by our recent decision in Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 Sol2d 633 (Fla. 1980), quashing the lower court's decision on which appellants rely. Similarly, the other alleged infirmities raised by appellants are devoid of merit and do not warrant extended discussion. Appellants' ex post facto argument presumes that section 944.485 operates to increase "punishment" for prisoners whose crimes were committed prior to its effective date. This presumption, however, is mistaken, as the purpose of the statute is not punitive. Flemming v. Nestor, 363 U.S. 603 (1960); Zarsky v. State, 300 So.2d 261 (Fla. 1974). Appellants' procedural due process arguments

---

* (continued)

(a) Shall disclose all revenue or assets as a condition of parole eligibility.
(b) Shall pay from such income and assets, except where such income is exempt by state or federal law all or a fair portion of the prison's daily subsistence costs, based upon the inmate's ability to pay, the liability or potential liability of the inmate to the victim or the guardian or the estate of the victim, and the needs of his dependents.
(2) Any prisoner who is directed to pay all or a fair portion of daily subsistence costs is entitled to reasonable advance notice of the assessment and shall be afforded an opportunity to present reasons for opposition to the assessment.
(3) The department shall promulgate, within 90 days of October 1, 1978, rules which implement this section.

For the rules of the Department of Corrections regarding the financial disclosure of inmates pursuant to section 944.485, see Florida Administrative Code rule 33-17.

presume a deprivation of liberty or property, but parole is neither. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979); Moore v. Florida Parole and Probation Commission, 289 So.2d 719 (Fla. 1974), cert. denied, 417 U.S. 935 (1974).

Appellants' assertion that the financial disclosure requirement violates their privilege against self-incrimination is raised prematurely. The claim of privilege must ordinarily be made at the time that disclosures are sought, see Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 105-10 (1961), and it can appropriately be raised by individual inmates on their disclosure forms, see Garner v. United States, 424 U.S. 648 (1976).

Finally, appellants' unlawful delegation argument is simply not persuasive. In enacting section 944.485, the legislature has prescribed sufficient standards and guidelines to comply with article II, section 3, of the Florida Constitution. Reynolds v. State, 383 Sol2d 228 (Fla. 1980); Florida State Board of Architecture v. Wasserman, 377 So.2d 653 (Fla. 1979).

The trial court's order upholding section 944.485 in the face of appellants' constitutional challenges is affirmed.

It is so ordered.

SUNDBERG, C.J., ALDERMAN and MCDONALD, JJ., Concur
ADKINS and OVERTON, JJ., Concur in the result only
BOYD, J., Dissents with an opinion

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

BOYD, J., dissenting.

I would agree with the majority opinion holding the cost assessment law constitutional if it were limited in application to prisoners sentenced for offenses committed after its effective date and if it required assessments to be imposed in court at the time of sentencing. By virtue of its retroactive effect and its procedural scheme, however, the statute as written is an unconstitutional ex post facto law and allows for the deprivation of liberty and property without due process of law.

With regard to many prisoners, the statute allows for the imposition of monetary burdens in excess of the possible punishments prescribed at the time of the offense. A law violates the ban on ex post facto legislation if it makes criminal an act after it has been committed or if it retroactively increases the possible punishment for crime. State v. Gale Distributors, Inc., 349 So.2d 150 (Fla. 1977); Higginbotham v. State, 88 Fla. 26, 101 So. 233 (1924).

The majority opinion disposes of the ex post facto argument by summarily concluding that the increased burdens imposed by the statute do not constitute punishment, but are merely conditions imposed incident to the granting of the privilege of parole. It is common knowledge that prison sentences are authorized and imposed in contemplation of the availability of parole. Many are the concerned citizens who have inquired into the basis for a seemingly Draconian prison sentence, only to be told "Understand this: the prisoner will be eligible for parole in X years." Parole has become such a fact of life in our criminal justice system that to condition or withhold eligibility for it is to increase the burdens imposed as punishment for crime.

Even with regard to prisoners convicted of and sentenced for offenses committed after the statute's effective date, if the cost assessment is not imposed by the court at

the time of sentencing, but subsequently by prison authorities as provided by the statute, then it constitutes a deprivation of liberty or property without due process of law. The majority disposes of this problem by concluding that there is no right, in the nature of a liberty or property right, to parole. But when a prisoner is sentenced for a crime, whether it be after a trial or pursuant to a plea, the prisoner should be able to know the extent of his punishment and also be eligible for parole on an equal footing with other prisoners similarly sentenced. This statute allows administrative officials to impose additional burdens as a condition of parole eligibility. The prisoner is faced with a deprivation either of property or liberty, without due process of law.

I respectfully dissent.

An Appeal from the Circuit Court in and for Leon County,

Ben C. Willis, Judge

Ben R. Patterson and Jerry G. Traynham of Patterson and Traynham, Tallahassee, Florida,

for Appellants

Jim Smith, Attorney General, and Lucy H. Harris, Assistant Attorney General, Tallahassee, Florida,

for Appellees

IN THE SUPREME COURT OF FLORIDA

FRIDAY, FEBRUARY 20, 1981

EDDIE SAMUEL IVORY, CHARLES JOHNSON, EDMOND DUHART, BEN CHANEY, BLAIR SMITH, GEORGE HELLER, ROBERT J. BUTLER, and JAMES RUTLEDGE,	**	
Appellants,	**	CASE NO. 57,251
vs.	**	No Circuit Court Case No. (Leon)
LOUIE L. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS, FLA., PAUL MERCHECK, DIRECTOR, FLORIDA PAROLE AND PROBATION COMMISSION,	**	
Appellees.	**	

On consideration of the motion for rehearing filed by attorneys for appellants,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

The motion for attorney fees filed by attorneys for appellants is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By Debbie Causseaux
Deputy Clerk

C
cc: Hon. Paul F. Hartsfield, Clerk
Hon. Ben C. Willis, Chief Judge

Jerry G. Traynham, Esquire
and Ben R. Patterson, Esquire
of Patterson & Traynham
Lucy H. Harris, Esquire

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

CASE NO.

EDDIE SAMUEL IVORY, CHARLES JOHNSON, EDMOND DUHART, BEN CHANEY, BLAIR SMITH, GEORGE HELLER, ROBERT J. BUTLER, and JAMES RUTLEDGE,

Plaintiffs,

vs.

LOUIE L. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS, FLA., PAUL MERCHECK, DIRECTOR, FLORIDA PAROLE AND PROBATION COMMISSION,

Defendants.

465861
RECORDED IN THE PUBLIC RECORDS OF LEON CO. FLA. IN THE BOOK & PAGE INDICATED
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CLERK OF THE CIRCUIT COURT

JUDGMENT

The plaintiffs named in and who signed the Complaint styled as above, which was forwarded to the Clerk of the Circuit Court of Leon County, have filed an affidavit that they cannot afford to prepay the costs of the actions they seek to file against the officers named as defendants. Nevertheless, they seek a declaratory judgment, seeking to have adjudged unconstitutional and void Chapter 78-441, Laws of Florida, Acts of 1978 Regular Session, and for injunctive relief against its enforcement. They have not complied with the requirements of Section 57.081, Florida Statutes, which requires an affidavit of insolvency to be supported by a written certificate of a member of the bar setting forth his investigation of the nature of plaintiffs' claim and that in his opinion it is meritorious and intends to act as attorney for the applicants without compensation. Such certificate is necessary to enable the filing of suit without payment of filing fees.

Although the applicants who are named as plaintiffs are not eligible to file the suit without prepayment of filing fee with the Clerk, the undersigned judge will nevertheless consider the Complaint and ascertain if it states a cause of action and render a declaration if such is appropriate without a responsive pleading from those named as defendants.

It appears somewhat contradictory that the plaintiffs assert a right to proceed in forma pauperis in their affidavit of poverty, and yet complain of violation of rights in being required, under Chapter 78-441, to disclose their revenue and assets as a condition of parole eligibility, and to pay "from such income and assets," based upon ability to pay, the liability of the inmate to the victims of their crimes and to pay a fair portion of daily subsistence costs. If they are in a state of pauperism there is no income or assets which could be affected by the operation of this law.

Furthermore, the Court finds that the statute is constitutional and valid and does not violate the plaintiffs' rights against self-incrimination, deprivation of property without due process of law, denial of equal protection of the law, abridging of privileges and immunities, or any other constitutional right. The Court finds the statute to be fully within the power of the legislature to enact in the exercise of its police powers, and such is so declared. All other relief sought by the plaintiffs is found to be without merit and is hereby denied, and, except for setting forth the declarations herein, the Complaint is dismissed.

A copy of this Judgment shall be furnished each of the parties described as plaintiffs in the above caption, and a copy of this Judgment, together with a copy of the Complaint, shall be furnished the officers named as defendants, and to the Attorney General of the State of Florida.

DONE AND ORDERED in Chambers this 18 day of June, 1979.

B. C. Willis

BEN C. WILLIS, CIRCUIT JUDGE

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, NOVEMBER 28, 1979

NOV 30 1979

EDDIE SAMUEL IVORY, ET AL.,

Appellants,

vs.

LOUIE L. WAINWRIGHT, ETC., ET AL.,

Appellees.

CASE NO. 57,251

The Court having accepted jurisdiction of the above appeal, it is

ORDERED that briefs on the merits shall be served as follows: Appellants' brief shall be served on or before December 18, 1979; Appellees' brief shall be served on or before January 7, 1980; and Appellants' reply brief shall be served on or before January 28, 1980. Please file an original and seven copies of all briefs. UNLESS BRIEFS ARE TIMELY FILED, THE PRIVILEGE OF ORAL ARGUMENT WILL BE FORFEITED.

IT IS FURTHER ORDERED that said case has been set for oral argument at 9:30 a.m. TUESDAY, MARCH 4, 1980, with a maximum of twenty (20) minutes to the side allowed for argument.

NO CONTINUANCES WILL BE GRANTED EXCEPT UPON A SHOWING OF EXTREME HARDSHIP.

Ben R. Patterson, Esquire, is hereby appointed as counsel for appellants in this cause.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

sg
cc: Louie L. Wainwright
Paul Murchek
Honorable Jim Smith
Ben R. Patterson, Esquire
Eddie Samuel Ivory

RULES

OF THE

DEPARTMENT OF CORRECTIONS

CHAPTER 33-17

FINANCIAL DISCLOSURE BY INMATES

33-17.01 Definitions. For the purposes of this Chapter:

(1) "Correctional system" includes major institutions, road prisons, vocational centers, community correctional centers and women's adjustment centers. It does not include residential facilities for persons under probation and parole supervision.

(2) "Inmates" includes inmates in major institutions, road prisons, vocational centers, community correctional centers and women's adjustment centers. It does not include persons under parole or probation status.

(3) "Assessment" as alter referred to in this rule is the amount of daily subsistence cost which an inmate is required to pay to the State of Florida.

(4) "Financial Disclosure Statement", as later referred to, is a statement of assets and/or revenue possessed by an inmate which is to be completed by each inmate in the correctional system unless otherwise excepted.

(5) "Daily Subsistence Cost" shall mean the proportionate cost of maintaining an inmate and shall include expenditures for salaries, other personal services, expenses, operating capital outlay and food products. It will not include expenditures for fixed capital outlay projects. The Department shall annually determine the average daily per diem cost for the correctional system. This determination shall be done in conjunction with the preparation of annual financial statements as of June 30 of each year. The daily subsistence cost produced

will include expenditures from general revenue sources only. The subsistence cost developed by this process will be published in annual, and monthly amounts by the Central Office and will be used as a basis for calculating assessment.

(6) "Assessment Base." The assessment base is the amount of income or assets which is available to the inmate to make payments to the State for subsistence. The assessment base will be arrived at by deducting income exempted by State or Federal law and other fixed domestic or institutional needs of the inmate from the total income available to the inmate.

Specific Authority: 20.315, 944.09, 945.21, 944.485, Florida Statutes. Law Implemented: §944.485, Florida Statutes. History: New: May 1, 1979.

33-17.02 Assessment Procedure.

(1) Financial Disclosure Statement. Each inmate in the correctional system, with the exception of those who have entered into an agreement under Section 947.135, Florida Statutes, prior to October 1, 1978, and each inmate who subsequently is incarcerated in the correctional system will file a financial disclosure statement using a format developed by the Department. The form provided by the Department will included spaces for:

a. Inmate identification.

b. A statement to be signed by the inmate acknowledging that failure to disclose revenue and/or assets which the inmate possesses is a violation of Section 944.485, Florida Statutes, for which the penalty is removal from parole eligibility.

c. Space for the inmate to disclose all income and assets which the inmate possesses along with adequate explanation of the source of the income, the type of asset, the availability of the asset for assessment and other information pertinent to the disclosure.

d. Recording the date on which the financial disclosure statement was completed and signed by the inmate.

e. Signature of the Department of Corrections representative who accepts the financial disclosure statement and the date on which the statement was accepted from the inmate.

(2) Method of Determination of Amount to be Assessed. After determining the value of the income and negotiable assets possessed by the inmate, the Department of Corrections employee responsible for completing the assessment notice to the inmate

will:

a. Determine the annual income and/or assets which will be available to the inmate.

b. Deduct from that annual amount the exclusions in paragraph 3.

c. Divide the remainder after deductions by 12 month to determine the monthly income available to the inmate.

d. Compare the monthly available income to the average monthly subsistence cost for the Department and assess the inmate for the amount, up to total monthly subsistence cost, which the inmate's available income will satisfy. An inmate will not be assessed an amount greater than the average monthly subsistence cost of the Department. The monthly amount arrived at in this process will be included in the assessment notice to the inmate. Inmates will not be required to make payments for partial months in which they are incarcerated.

(3) Income and assets to be excluded from the Assessment Base. The amount assessed each inmate will be based on that inmate's ability to pay after a thorough examination of the revenue and assets available to the inmate. Specifically excluded from consideration is income that is excepted by State or Federal law. Additionally, the following will be excluded from the assessment base:

a. Liability or potential liability for restitution payments to a victim or guardian of an estate of a victim of the inmate.

b. Needs of dependents of the inmate.

c. Amount each inmate is authorized to draw from the Inmate Trust Fund to satisfy his personal needs at

the place incarcerated.

d. Income derived from within the correctional system such as canteen operator pay.

e. Earnings received by an inmate from paid employment authorized by Chapter 33-9, Extension of the Limits of Confinement, of the Rules of the Department of Corrections. These earnings will be disbursed according to paragraph 33-9.13 of the above rules and are exempt from the assessment base.

f. Assets which are not in a negotiable form and from which no income is received by the inmate or by a third party for the inmate.

(4) Notice of Assessment.. Each inmate is entitled to a reasonable notice of the amount of the daily per diem cost which the inmate will be expected to reimburse to the State of Florida. Each business office charged with processing collections from inmates will notify the inmate at least fifteen calendar days before payment is due in the business office. Notice to the inmate will be by written letter using a standard format adopted by the Department. Acknowledgement of the notice will be completed by the inmate on the date the notice of assessment is received.

(5) Notice of Appeal. Each inmate will be given the opportunity to present reasons for opposition to the assessment. Such notice will be given in writing. The appeal must be received by the business office which originally provided the notice of assessment within fifteen calendar days after receopt of the notice of assessment.

(6) Changes to the Financial Disclosure Statement. Each inmate will immediately report any changes which affect his/her

income or assets as they were previously disclosed. Such changes will be reported by submission of a revised financial disclosure statement. That changed information will be used to revise the notice of assessment as appropriate.

(7) Exemptions, Reduced Assessments, Extended Payments. An inmate may request a review of his/her current assessment on the basis that he/she has severe, unusual or unavoidable expenses or obligations which substantially reduce his/her ability to pay the monthly subsistence assessment. The inmate must notify the Department of his/her request, and provide any receipts, tax records, bills, certified statements or other documents requested by the Department, before reconsideration of a current assessment will be undertaken. After review of the circumstances the Department may agree to an exemption, reduced assessment or an extension of payments as the circumstances warrant. A revised assessment will be transmitted to the inmate specifying the date of the revision, be it retroactive or otherwise. If a revision to the assessment is not agreed to, the inmate will be notified in writing of the decision.

(8) Implementation. The Department will designate by directive, the staff positions which are to implement and maintain the system of assessments specified in these rules. The inmates subject to these rules will be provided access to the directive to assist them in submission of disclosure statements and filing of appeals.

Specific Authority: §20.315, 944.09, 944.485, Florida Statutes. Law Implemented: §944.485, Florida Statutes. History: New: May 1, 1979.

33-17.03 Forms.

(1) Form DC No._____: To be used by inmates for filing financial disclosure statement.

INMATE FINANCIAL DISCLOSURE STATEMENT

I, _____ (Full Name), _____ (Prison No.), _____ (Social Security No.),

presently assigned to _____ (Institution),

hereby disclose possession of the following income and assets as required by Section 944.0265, Florida Statutes. I declare that the following income and assets are a complete listing and I understand that failure to disclose my total income and assets is a violation of the above-cited Florida Statute, penalty for which is removal from parole eligibility. I further declare that I will disclose any changes to this listing to the appropriate Departmental staff immediately.

Revenue:

Description:

Source:

Amount:

Frequency of Receipt (one time, monthly, yearly, etc.):

Expected Duration of Income (lump sum, 1 year, lifetime, etc.):

Assets:

Description:

Estimated Value and Source of Estimate:

Indebtedness Against the Asset and to Whom Payments are Made:

Remarks in Further Explanation of Any of the Above-Statements:

_____ Signature of Declarer	_____ Date of Statement
_____ Signature of DC Person Receiving Statement	_____ Date Statement Received by DC

(2) Form DC No._____: To be used by inmates for filing additional financial disclosure, if necessary.

CONTINUATION SHEET TO
INMATE FINANCIAL DISCLOSURE STATEMENT

Continuation Sheet for _____
Name of Declarer

Revenue:

Description:

Source:

Amount:

Frequency of Receipt (one time, monthly, yearly, etc):

Expected Duration of Income (lump sum, 1 year, lifetime, etc):

Assets:

Description:

Estimated Value and Source of Estimate:

Indebtedness Against the Asset and to Whom Payments are Made:

Remarks in Further Explanation of Any of the Above-Statements:

_____ _____
Signature of Declarer Date of Statement

_____ _____
Signature of DC Person Receiving Statement Date Statement Received by DC

(3) Form DC No._____: To be used by the Department to provide inmates Notice of Assessment to Pay Subsistence Cost.

NOTICE OF ASSESSMENT
TO PAY SUBSISTENCE COST

TO:_____
Inmate Name

_____
Prison Number

_____
Social Security Number

_____
Institution Name

You are hereby notified that your Financial Disclosure Statement dated _____, has been thoroughly reviewed by the designated staff of this Department. In accordance with Florida Statute 944.0265, you are hereby assessed a monthly payment of _____ to be applied to the daily subsistence cost of maintaining inmates in the correctional system. You are directed to make the necessary arrangements for payment of the above-amount to the business office in accordance with a schedule worked out with you and designated institutional staff. Should you have reasonable objections to this assessment, your appeal should be provided to the appropriate Departmental staff within fifteen calendar days from the date you receive this Notice of Assessment.

_____ _____
Signature of Person Authorizing Assessment — Date Prepared

_____ _____
Signature of Inmate Receiving Assessment — Date Received

Specific Authority: 20.315, 944.09, 945.21, 944.485, Florida Statutes. Law Implemented: §944.485, Florida Statutes.
History: New: May 1, 1979.

IN THE SUPREME COURT OF FLORIDA

EDDIE SAMUEL IVORY, CHARLES JOHNSON, EDMOND DUHART, BEN CHANEY, BLAIR SMITH, GEORGE HELLER, ROBERT J. BUTLER, and JAMES RUTLEDGE,

Appellants,

vs. Case No. 57, 127

LOUIE L. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS: PAUL MURCHEK, DIRECTOR, FLORIDA PAROLE AND PROBATION COMMISSION,

Appellees.

_____/

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Eddie Samuel Ivory, Charles Johnson, Edmond Duhard, Ben Chaney, Blair Smith, George Heller, Robert J. Butler, and James Rutledge, the Appellants above named, hereby appeal to the Supreme Court of the United States from the final order of this Court affirming the trial court's declaration upholding as facially valid §944.485, Florida Statutes (Supp. 1978), and from this Court's order denying motion for rehearing in this case, dated February 20, 1981.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Respectfully submitted,

Jerry G. Traynham

PATTERSON & TRAYNHAM
Attorneys at Law
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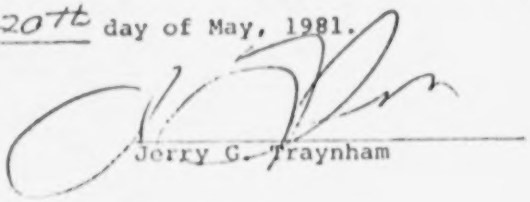
Tallahassee, Florida 32303
(904) 224-9181

Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to Jim Smith, Attorney General and Lucy H. Harris, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32301, this 20th day of May, 1981.



Jerry G. Traynham